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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Dockets 91-221 and 87-8
	)	
Television Satellite Stations Review of Policy and Rules	)	

To: The Commission

COMMENTS OF MILLER BROADCASTING, INC.

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SUMMARY

Miller Broadcasting, Inc. (Miller), the licensee of Television Broadcast Station KMCI, which operates on Channel 38 at Lawrence, Kansas, submits its comments in response to certain aspects of the *Second Further Notice of Proposed Rule Making* (the Notice), FCC 96-438, Pike & Fischer Radio Regulations 73-7915 (1996), released November 7, 1996, relative to the use of Local Marketing Agreements (LMAs) in the Television Broadcast Service.

The status of the television broadcast industry currently is such that smaller companies cannot compete without some assistance in establishing a foothold in a market. As Miller has found, and surely other smaller broadcast licensees have discovered as well, the costs of construction or acquisition and programming of a new, or newly-acquired station, are prohibitive. The use of a TV LMA is an excellent means of permitting a broadcast licensee of obtaining a foothold in mature markets, while immediately providing worthwhile programming. In Miller's case, transition programming was obtained which is responsive to the needs and interests of the Lawrence, Kansas market. It is unclear how else Miller would have been able to provide transitional programming on a cost-effective basis. True broadcast television diversity can be obtained using LMAs. As such, the Commission should not treat such more restrictively, as an offshoot of its ownership and attribution policies, than it would other program provision agreements.

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COMMENTS OF MILLER BROADCASTING, INC.

Miller Broadcasting, Inc. (Miller), the licensee of Television Broadcast Station KMCI, which operates on Channel 38 at Lawrence, Kansas, by counsel and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415) hereby respectfully submits its comments in response to certain aspects of the *Second Further Notice of Proposed Rule Making* (the Notice), FCC 96-438, Pike & Fischer Radio Regulations 73-7915 (1996), released November 7, 1996, relative to the use of Local Marketing Agreements (LMAs) in the Television Broadcast Service. For its comments, Miller states as follows:

I. Introduction

1. The instant Notice is a followup to the *Further Notice of Proposed Rule Making* in MM Dockets 91-221 and 87-8, commenced in 1995. Therein, the Commission, *inter alia,* sought comment on television LMAs. The Commission stated in that Further Notice that, from its experience with radio LMAs, it appeared that such

agreements, subject to some general Commission guidelines, can provide competitive and diversity benefits to both the brokering parties and to the public. The Further Notice stated that the Commission was aware that some LMAs were currently in use by broadcast stations, but it was not clear how prevalent they were in the broadcast television industry. So, quantitative data was sought. The Commission also asked whether, as is the case in the radio broadcast industry, LMAs are often used as precursors to the sale of stations pending acquisition of financing or FCC approval of the assignment application. It asked whether LMAs are useful in making use of economies of scale by combining operations and facilities. Finally, the Commission asked generally, are there similar advantages and benefits in television LMAs and radio LMAs, and what benefits accrue to the public from television LMAs.

2. The Commission was especially interested in determining whether radio LMA guidelines for ownership attribution purposes should be applied to television LMAs, and what other restrictions should be placed on them. The Commission tentatively proposed to treat LMAs involving television stations in the same basic manner as it did for radio stations: time brokerage of another television station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours would result in counting the brokered station toward the brokering licensee's national and local ownership limits. It asked, however, whether that percentage was appropriate, whether the existence of a television LMA should

have any effect on renewal expectancy, and whether other ownership attribution limitations should be applied.

3. The instant Notice was issued because of the intervening effects of the Telecommunications Act of 1996 (The "1996 Act")[1] on national broadcast television multiple ownership rules. The change from numerical caps on station ownership nationally to audience reach limitations necessitated changes in the means by which audience is measured, and that issue is being considered by means of a *Notice of Proposed Rule Making* FCC 96-438, issued contemporaneously with the instant Notice. That Notice asks, for example, how LMAs should be treated for purposes of calculating national audience reach. Relevant to that inquiry is the practical relationship between a broadcast television licensee and the brokering station at the local level, and the function of a television LMA in the first place. However, Miller confines its comments to the regulatory treatment of television LMAs to the effect on local ownership in the instant proceeding.

4. It is acknowledged that the Commission intends to determine in this proceeding how to determine local, rather than national, audience reach and the effect of LMAs on local competition and diversity. As the Commission states at paragraph 4 of the instant Notice:

> Finally, we seek comment on how, if we decide to make television local marketing agreements ("LMAs") attributable for ownership purposes, existing LMAs should be treated under the Act and the new rules.

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[1] Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996).

It is believed that Miller Broadcasting, Inc. has a unique perspective on the effect of TV LMAs on local competition and diversity, and the value of those agreements to newcomers in mature television markets.

5. The Commission notes that there have been significant changes in the television broadcast marketplace since the commencement of these docket proceedings, and it continues to change rapidly, in terms of competition. Nonetheless, the Commission has proposed in its TV Attribution proceeding[2] to treat time brokerage of another television station in the same market for more than 15 percent of the brokered station's weekly broadcast hours as being attributable, and therefore as counting toward the brokered licensee's multiple ownership limits. This is important, as will be the issue of whether existing LMAs are grandfathered, if there is no duopoly modification, since a television LMA would be precluded in any market where the time broker owns or has an attributable interest in another television station.

6. The Telecommunications Act of 1996 expressed, at Section 202(g), a specific intention to protect existing TV LMAs in effect prior to February 8, 1996. Congress' intention was rather clear in the Conference Report with respect to TV LMA policy: "The conferees note the positive contributions of television LMAs, and this subsection assures that this legislation does not deprive the public of benefits of existing LMAs that were otherwise in

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[2] See *Review of the Commission's Regulations Concerning Television Broadcasting, Further Notice of Proposed Rule Making,* 10 FCC Rcd. 3524 (1995).

compliance with Commission regulations on the date of enactment."[3] The Commission, therefore, in this proceeding, wishes to determine the regulatory treatment for TV LMAs in the event that the Commission should find them to be attributable in the companion proceeding, for ownership purposes. A specific question is the proper length of the contractual relationship between the brokering and the brokered station, and any other data bearing on that relationship that helps define the proper treatment of LMAs for ownership limitations.

II. The Use of LMAs as a Springboard to Diversity

7. The experience of Miller with its existing LMA should be highly instructive to the determination of the proper regulatory treatment of TV LMAs generally. Miller also urgently requests that the Commission grandfather TV LMAs in effect as of the effective date of any new rules, should the attribution proceeding be resolved by any finding that TV LMAs are to be considered as ownership interests for purposes of local multiple ownership limitation regulations.

8. Miller is a small, family-owned and operated broadcasting company. When it was first formed and acquired the construction permit for Channel 38 at Lawrence, Kansas, it had a difficult time acquiring affordable programming while at the same time amortizing the cost of station construction. This is, of course, a common concern in mature broadcast markets. Miller entered into an

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[3] Conference Report, at 134.

affiliation agreement for the airing of retail marketing-type programming. This was a satisfactory arrangement for some time, in that it allowed the station to commence operation and achieve some stability, while amortizing costs. However, it provided the station little opportunity to explore new avenues of locally-originated programming, especially local news. The same programming was offered in the market by cable systems, broadcast stations, and direct-to-home satellite video providers. As Miller discovered in conducting its regular ascertainment of community issues and concerns, its station was being perceived by viewers in a specific category, and its programming viewed for one purpose only. In the view of the licensee's principals, it was necessary to create another arrangement which would permit the station a greater ability to provide locally-targeted programming, more specifically aimed at the ascertained needs and interests of the local community, and an identity that reflected a relationship with the community.

9. In March of 1996, Miller entered into an LMA with Scripps-Howard Broadcasting Company, for the provision of news, sports, informational, public service and entertainment programming similar to that which is broadcast by other stations in the market. That LMA has a ten-year term, and provides both stability and flexibility to Miller that was not available under the prior affiliation agreement. It has worked exceptionally well in allowing Miller to establish a rapport with the community that did not exist before. Interestingly, under the LMA provisions between Miller and

Scripps, given the safeguards for licensees and protections of licensee control that are built into modern LMA agreements, Miller is indisputably more comfortable with the level of control it has as a licensee than was the case pursuant to the former affiliation agreement to which Miller was a party.

10. Miller views the LMA as a transitional tool, which allows a local station the ability to gradually develop financial independence and stability, through the amortization of debt, and the development of, for example, local news department. Such a commitment of resources is simply not possible for a startup broadcast operation. It is surely possible that in some markets, increased use of TV LMAs, coupled with relaxation of local multiple ownership rules for television, might decrease program choices. However, the TV LMA is also what Miller would term a "springboard to diversity" of programming and perhaps the sole means by which a family-owned UHF television station can, over time, provide locally-originated television service to the community of license in mature markets. It allows time and money for a new broadcaster, or new licensee, faced with significant debt load from construction or acquisition, to provide good-quality programming from the start, and to gradually create its own independence, building its own local news department, and gradually focusing more and more on its own program generation. Given the cost of television programming now, and in the foreseeable future, this is the only means of achieving true diversity of program choices, and competitiveness in the over-the-air television broadcast marketplace.

11. Therefore, it is urgent that any grandfather or transition provisions that the Commission may adopt, (depending on the outcome of the attribution proceeding, and depending on the extent to which the Commission intends to relax local television ownership rules), not invalidate LMAs in effect as of the date of any new rules, prior to the end of the existing terms of such agreements. The term of existing LMAs may be up to ten years. It is this type of agreement, and this length of term, that will allow a station to implement a long-term diversity plan. The public will benefit from such arrangements in the long term, as they are better served by diversified, educational, entertaining and informative local programming. Given the uncertainty over the future of cable "must-carry" provisions, stations such as Miller's KMCI must rely on the attractiveness of their own programming, and the TV LMA provides the mechanism to do so over the medium term.

12. In any case, limitations on the transferability or renewal of grandfathered LMAs should be carefully considered. Among the assets purchased and sold when a television broadcast licensee is sold or control is transferred are the company's business plan and existing beneficial contracts. As discussed above, it is a major component of Miller's business plan to develop its independent source of local program origination, using its existing LMA as a tool to further that goal. Should the station be sold in the interim, that business plan, and the means to successfully execute it, necessitate the assignability or transferability (with the consent of the brokering station) of the LMA. Just as network

affiliation agreements are assignable with consent of the network, LMAs should be assignable as well, without adverse effect of the grandfathering provisions.

13. The Commission's instant Notice suggests that the Congress strongly supported grandfathering of existing LMAs for the remainder of their terms, and that those who relied on the Commission's existing regulations ought not be prejudiced in the process of crafting new rules. It is suggested that this combination of policies is sufficient to cause existing LMAs to be grandfathered, and the Commission's Notice appears to suggest the same. At paragraphs 88 and 89 of the Notice, the Commission states:

> We thus are inclined to institute a grandfathering policy to provide that in the event television LMAs become attributable pursuant to the broadcast attribution proceeding, television LMAs entered into prior to a specific date, and that are otherwise in compliance with applicable rules and policies, would be permitted to continue in force without disruption until the original term in the LMA expires. However, if a grandfathered television LMA results in violation of any Commission ownership rule, a party would be required to seek a waiver from the Commission prior to transferring the station or renewing the grandfathered television LMA.
>
> *****
>
> With respect to specifying a particular grandfathering date in the event we determine television LMAs should be attributable under our local ownership rules, we are inclined to grandfather all television LMAs entered into before the adoption date of this Notice (November 5, 1996) for purposes of compliance with our ownership rules...

III. Conclusions

14. The status of the television broadcast industry currently is such that smaller companies cannot compete without some assistance in establishing a foothold in a market. As Miller has found, and surely other smaller broadcast licensees have discovered

as well, the costs of construction or acquisition and programming of a new, or newly-acquired station, are prohibitive. The use of a TV LMA is an excellent means of permitting a broadcast licensee of obtaining a foothold in mature markets, while immediately providing worthwhile programming. In Miller's case, transition programming was obtained which is responsive to the needs and interests of the Lawrence, Kansas market. It is unclear how else Miller would have been able to provide transitional programming on a cost-effective basis. True broadcast television diversity can be obtained using LMAs. As such, the Commission should not treat such more restrictively, as an offshoot of its ownership and attribution policies, than it would other program provision agreements.

Therefore, the foregoing considered, Miller Broadcasting Company respectfully requests that the Commission craft final regulations governing television Local Marketing Agreements consistent with the foregoing comments.

Respectfully submitted,

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